

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

_____	X
CATHERINE RUBERY, Derivatively on	:
Behalf of E*TRADE FINANCIAL	:
CORPORATION,	:
	:
Plaintiffs,	:
	:
vs.	:
	:
MITCHELL H. CAPLAN, ROBERT J.	:
SIMMONS, R. JARRETT LILIEN, DENNIS	:
E. WEBB, MICHAEL K. PARKS, LEWIS E.	:
RANDALL, DONNA L. WEAVER,	:
STEPHEN H. WILLARD, RONALD D.	:
FISHER, C. CATHLEEN RAFFAELI,	:
GEORGE A. HAYTER, and DARYL G.	:
BREWSTER,	:
	:
Defendants,	:
	:
-and-	:
	:
E*TRADE FINANCIAL CORPORATION, a	:
Delaware corporation,	:
	:
Nominal Defendant.	:
_____	X

**PLAINTIFFS' NOTICE OF UNOPPOSED MOTION FOR
FINAL APPROVAL OF SETTLEMENT**

TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD

PLEASE TAKE NOTICE that on September 13, 2013 at 10:00 a.m. in Courtroom 706, before the Honorable J. Paul Oetken, District Judge of the U.S. District Court for the Southern District of New York, located at 40 Foley Square, New York, New York, Plaintiffs¹ Marilyn Clark and Catherine Rubery, each individually and derivatively on behalf of E*TRADE Financial Corporation ("E*TRADE" or the "Company"), by and through their undersigned counsel, hereby move this Court unopposed for an order granting final approval of the Settlement set forth in the Stipulation. Plaintiffs hereby apply for entry of the [Proposed] Judgment and Order of Dismissal with Prejudice substantially in the form of Exhibit C attached to the Stipulation and submitted herewith, requesting the Court to determine: (i) whether the Settlement of the Action on the terms and conditions provided for in the Stipulation is fair, reasonable, and adequate to E*TRADE and Current E*TRADE Shareholders, and should be finally approved by the Court; (ii) whether the Notice fully satisfied the requirements of Rule 23.1 of the Federal Rules of Civil Procedure and the requirements of due process; (iii) whether a Judgment as provided in the Stipulation and attached as Exhibit E to the Stipulation should be entered, dismissing the Action with prejudice; (iv) whether all Released Claims against the Released Persons should be fully and finally released; and (v) to rule upon such other matters as the Court may deem appropriate.

This Unopposed Motion is made pursuant to Rule 23.1(c) of the Federal Rules of Civil Procedure and is supported by the accompanying Memorandum of Law and the supporting Declaration of Craig W. Smith filed herewith, the Declaration of Professor Jeffrey N. Gordon (filed May 17, 2013, Dkt. 57), the Supplemental Declaration of Professor Jeffrey N. Gordon (filed August 26, 2013, Dkt. 74), the Declaration of the Craig W. Smith in support of Plaintiffs' Application for an

¹ Unless otherwise noted, all capitalized terms shall have the same definition as set forth in the Stipulation of Settlement dated October 2, 2012 and filed with the Court on November 2, 2012 ("Stipulation"). Dkt. 38.

Award of Attorney's Fees and Reimbursement of Expenses with exhibits (filed May 17, 2013, Dkt. 55), the Corrected Declaration of Craig W. Smith in support of Plaintiffs' Application for an Award of Attorney's Fees and Reimbursement of Expenses (filed May 22, 2013, Dkt. 58-2), and the Supplemental Declaration of Craig W. Smith in Support of Plaintiffs' Application for an Award of Attorneys' Fees and Reimbursement of Expenses (filed August 26, 2013, Dkt. 72), the [Proposed] Final Judgment and Order of Dismissal submitted herewith, and the Stipulation and exhibits thereto, all pleadings and papers filed in this action, any arguments made before the Court at the hearing of this Unopposed Motion, and such additional evidence or argument as may be required by the Court.

DATED: September 6, 2013

Respectfully submitted,

ROBBINS ARROYO LLP

/s/Craig W. Smith

CRAIG W. SMITH

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Additional Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 6, 2013, a copy of the foregoing was filed electronically using the Court's CM/ECF system. Notice of this filing will be sent to all parties on the attached service list by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Craig W. Smith

CRAIG W. SMITH (*pro hac vice*)